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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1047

CARLA A. HILLS, Secretary of Housing and Urban Development, *Petitioner*

v.

DOROTHY GAUTREAUX, ET. AL., *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE NOTRE DAME CENTER FOR CIVIL RIGHTS, THE CENTER FOR NATIONAL POLICY REVIEW, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, LEAGUE OF WOMEN VOTERS OF ILLINOIS, LEAGUE OF WOMEN VOTERS OF COOK COUNTY, LEAGUE OF WOMEN VOTERS OF CHICAGO AND SUBURBAN ACTION INSTITUTE AS AMICUS CURIAE

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INTEREST OF AMICI

Amici pursue programs to insure equal opportunity to all Americans. They are deeply concerned with the rapid growth of residential segregation, particularly between cities and suburbs, which threatens to divide this country into two warring camps.

The University of Notre Dame Center for Civil Rights was established in 1973 to continue in the private sector the commitment toward achieving equality which the Reverend Theodore M. Hesburgh, C.S.C., President of the University, pursued for fifteen years as a member and then Chairman of the United States Commission on Civil Rights. The Center for Civil Rights is a resource for research into the United States' recent civil rights history; it engages in analysis of current civil rights issues, and it attempts to recommend viable solutions to civil rights problems. The Center is intimately familiar with the history and current extent of housing discrimination in this country and the legal and moral issues involved in eradicating this blight. The Center, moreover, believes that this case contains the most important and controversial issue in the area of public housing, e.g. the selection of sites for that housing. The following members of the Advisory Council of the Center for Civil Rights join in support of this brief: Reverend Theodore M. Hesburgh, Chairman; Berl I. Bernhard, partner in law firms in Washington, D.C., and New York and former Staff Director of the U.S. Commission on Civil Rights; Marian Wright Edelman, Director of the Children's Defense Fund; Oscar Garcia-Rivera, Editor, Juvenile Justice Standards Project and Chairman of Aspira of New York, Inc.; Earl G. Graves, Earl G. Graves Publishing Company; M. Carl Holman, President, National Urban Coalition; Kenneth Keniston, Professor, Yale University; Burke Marshall, Deputy Dean, Yale Law School; William May, Chairman of the Board, American Can Company; Grace Olivarez, Commissioner, State Planning Commission of New Mexico; Harrison Salisbury, author and retired member of the edi-

torial staff of the *New York Times;* William L. Taylor, Director, Center for National Policy Review and former Staff Director of the U.S. Commission on Civil Rights; Professor Lester C. Thurow, Massachusetts Institute of Technology; Harris Wofford, President, Bryn Mawr College; and Howard A. Glickstein, Director of the Center and former General Counsel and Staff Director of the U.S. Commission on Civil Rights.

Since its inception in 1970, the Center for National Policy Review has furnished support for various civil rights and other public interest organizations in their struggle to implement Federal laws designed to protect the rights and interests of racial minorities. As a public interest law center located at the Catholic University of America Law School in Washington, D. C., the Center has provided research and other technical assistance as well as legal representation in rule making or other Federal agency proceedings. The Center is committed to devising policies of affirmative action to undo the effects of past discriminations under Federal programs. Recently, the Center has been deeply involved with studying the legislative history and effect of Federal housing legislation such as the 1974 Housing and Community Development Act.

The League of Women Voters in the United States was incorporated under the laws of the District of Columbia in 1920 and has since that time promoted political responsibility through informed and active participation of citizens in government. At present it has a membership of 140,000. The League has undertaken numerous studies on issues of public interest and has taken action as a result of these studies, including appearances in judicial proceedings involving important public issues. Among the subjects to which the nation-

al, state, and local Leagues have devoted extensive study are the impact of inequality of opportunity in employment, education, and housing in the United States. The League has concluded that residential segregation is one of the primary causes of lack of opportunity in the critical areas of employment and education. The League of Women Voters of Illinois is an affiliate of the National League with approximately 9,000 citizens of Illinois in 81 local chapters. The Cook County League, because of its county-wide membership base, is acutely conscious of the metropolitan nature of the problem of low-income housing, and is concerned with the increasing trend toward a poor black inner city surrounded by a range of white, middle-class suburbs. The League of Women Voters of Chicago has studied the relationship between residential segregation and segregation in education, and has concluded that it is of the utmost importance that the pattern of residential segregation which has up to now been protected, promoted, and furthered by the government of the City of Chicago and the Chicago Housing Authority with the knowing cooperation of the United States Department of Housing and Urban Development be broken if the City is to survive as a socially and economically viable entity.

Suburban Action Institute is a non-profit agency established in 1969 for the purpose of promoting an equitable urban growth policy for America. It is particularly concerned with eliminating discriminatory barriers established by laws which have the effect of excluding racial and economic minorities from finding housing and jobs within suburban communities. Through a comprehensive program of research, education, organization and litigation, it seeks to overturn

existing discriminatory housing and land use practices and to replace them with inclusionary development policies. The Institute is located in New York City and has served as a consultant to federal, state and local governments. Its Board of Trustees is comprised of public officials and private individuals concerned with finding means for having the nation's growing suburbs share with the cities in overcoming poverty and discrimination.

CONSENT OF THE PARTIES

Carla A. Hills and Dorothy Gautreaux et. al., by their attorneys, have consented to the filing of this brief. Their letters of consent are on file with the Clerk of this Court.

QUESTIONS PRESENTED

1. Having found that the Department of Housing and Urban Development had engaged in "unconstitutional site selection and tenant assignment procedures" and that the "extra-city impact" of HUD's discrimination "appears to be profound and far-reaching," did the Court of Appeals err in ordering the district court to consider requiring metropolitan area relief as to HUD?

2. Does a metropolitan remedy as to HUD present such practical problems as to necessitate more limited equitable relief?

SUMMARY OF ARGUMENT

I

We believe that the directive of the court below that metropolitan-wide relief be fashioned to correct the racially discriminatory actions of the petitioner HUD

does not raise issues of interdistrict remedy of the kind considered by this Court in *Milliken* v. *Bradley,* 418 U.S. 717 (1974). The remedy ordered by the Court of Appeals applies only to HUD—a federal agency whose activities are not restricted to particular jurisdictions —and in no way mandates any action by any of the suburban Chicago housing authorities. HUD has clear statutory authority to promote the construction of low-income subsidized housing throughout the metropolitan area without involvement of local housing authorities.

HUD, moreover, traditionally operates on a metropolitan-wide or a housing market area basis in structuring its programs and activities and as a result the appropriate district for purposes of developing a remedy in this matter is the metropolitan area and not the political confines of the City of Chicago.

In addition, *amici* contend that this case differs from *Milliken* because the lower court here was obligated to exercise its equitable powers to the greatest extent possible to accomplish the strong underlying Congressional policy that federal housing programs be structured to deconcentrate low-cost subsidized developments throughout a metropolitan area so as to eliminate racial and economic segregation. This policy emerges clearly from legislative findings and directives contained in the Housing and Community Development Act of 1974, the Fair Housing Law of 1968, and the Civil Rights Act of 1964. In *Milliken,* the Court dealt only with the issue of appropriate equitable relief in light of a finding of denial of equal protection of the laws in the administration of Detroit's public school system and no overriding Congressional policy was in issue.

II

Practical considerations and the deeply rooted tradition of local control of the operation of schools militated against an interdistrict remedy in *Milliken.* These concerns are not present when dealing with the administration of federal housing policies. The decision below deserves additional support for historical, sociological, and planning considerations, all dictating that metropolitan responses to resolving our nation's housing problems are essential. The decision does not raise the problems or contravene traditions of the type this Court responded to in *Milliken.*

The *amici* support, but do not develop in this brief, the respondent's position that there is sufficient evidence in the record pointing to purposeful segregation in public housing programs outside Chicago, thereby warranting a presumption of racial discrimination by suburban local housing authorities. See, *Keyes* v. *School District No. 1, Denver, Colo.,* 413 U.S. 189 (1973). Thus, even under the petitioner's view of the applicability of *Milliken,* the lower court was justified in directing a metropolitan remedy as to HUD which has financed and supported all of the public housing construction throughout the Chicago region.

ARGUMENT

I

A METROPOLITAN REMEDY AS TO HUD IS NOT PRECLUDED BY *MILLIKEN* SINCE SUBURBAN HOUSING AUTHORITIES ARE NOT MANDATED TO TAKE ANY ACTION AND HUD'S AREA OF OPERATIONS IS UNRELATED TO DISTRICT LINES.

In seeking to convince this Court that the present case is controlled by *Milliken* v. *Bradley,* petitioner must account for the fact that the remedy here, unlike

that in *Milliken,* runs only against a federal agency, not any state or local unit. Its effort to deal with this uncomfortable fact rests entirely on a claim that Federal housing programs are virtually universally implemented "through cooperation with local housing authorities, since [HUD] has no legal power to coerce them to participate in any coordinated metropolitan area-wide plan." (Pet's Br., pp. 15-16 n.14). An order involving a metropolitan area remedy, petitioner claims, necessarily compels HUD somehow to coerce suburban housing authorities, who HUD argues have not been found to have engaged in discriminatory actions, to undertake new integrated low-cost housing developments. According to the petitioner, this is no different from *Milliken* where the state implemented its school programs through local school districts and where this Court held that an interdistrict desegregation remedy was inappropriate, not only to the individual districts, but to the state as well. The petitioner thus seeks to posit a situation where local suburban housing authorities constitute critical elements in any metropolitan relief ordered against HUD, thereby making a conflict with the *Milliken* decision unavoidable.

But the petitioner has misstated both the nature of the relief ordered by the Court of Appeals and the role played by local housing authorities in HUD programs. At the outset, it is important to stress that in this case it is uncontroverted that HUD is a principal wrongdoer and the challenged order is directed only to that agency. The housing authorities outside Chicago have not been subjected to any court mandate and HUD has not been directed to take any action outside its legal powers. Furthermore, in the event that the district

court determines that remedial action is required by any of these local authorities, they will have ample opportunity to be heard on the matter.

Most important, however, HUD is not limited to acting through local housing authorities to implement federal housing policies. The petitioner can work with private housing developers to provide low-cost housing throughout the Chicago metropolitan area and a remedy as applied to the suburbs need not entail the involvement of local housing agencies. In addition, the relief envisioned by the Court of Appeals is not interdistrict in nature, since HUD's usual focus with respect to carrying out its housing activities is a "housing market area." In Chicago the "housing market area" is the metropolitan region which covers a number of political jurisdictions. Finally, to limit the relief here to the confines of the inner-city would contravene the Congressional directive to HUD to seek metropolitan solutions for the provision of low-cost housing.

A. HUD Is Authorized to Contract with Private Developers and Non-Profit Organizations to Provide Low-Cost Housing Opportunities and Need Not Rely Upon Local Housing Authorities.

Contrary to the theme reasserted throughout petitioner's brief, Federal housing programs are not beholden to local authorities and local control. In enacting the Housing and Community Development Act of 1974, Congress provided substantial authority for HUD to contract directly with private developers for the purpose of aiding lower income families in obtaining a decent place to live.

The 1974 Act establishes a new housing assistance program which is an outgrowth of the leased housing program begun in 1965. Under the old program a local

housing authority could lease units in private structures for rental by low income persons; HUD was limited to dealing through the local authority. The 1974 revisions, contained in Section 8 of the United States Housing Act of 1937 as revised (42 U.S.C. § 1437f), now permit HUD to select developers directly in the absence of a local housing authority or where HUD determines that an existing housing authority is unable to implement the purposes of the law. The Secretary may "enter into such contracts and to perform the other functions assigned to a public housing agency by this section." 42 U.S.C. § 1437f(b)(1).[1]

Even prior to the new Section 8, HUD was authorized to implement its housing programs by dealing directly with private developers. This was accomplished through the Section 236 and 235 programs, established pursuant to the Housing and Urban Development Act of 1968. 12 U.S.C. §§ 1715z and 1715z-1. The Section 236 program is designed to provide lower cost rental units. A qualified sponsor can receive FHA insured mortgage financing thereby reducing the interest cost to as low as one percent for a term of up to 40 years for either rehabilitation or new construction of multi-family units. Because of the reduced mortgage rate, rental cost for low-income tenants can be limited to 25 percent of the tenant's income. The upper income limit for

[1] The new Section 8 programs permits assistance on behalf of new, substantially rehabilitated, or existing rental units through assistance payment contracts with owners. Eligible families include those with annual family incomes not in excess of 80% of the median income in the area. Aided families will be required to contribute 15% to 25% of their total income for rent. While 100% of the units in a development may be assisted, HUD is to give preference to projects involving not more than 20% assisted units. 42 U.S.C. § 1437f(c).

families to be eligible for residency in a 236 project is 135 percent of the public housing initial occupancy limit in the area where the project is located. The Section 235 program allows for home ownership and functions in a fashion similar to the 236 program. Qualified sponsors can obtain subsidies to reduce interest rates, the benefits of which are then passed on to qualified lower income applicants. The important point is that qualified sponsors can apply directly to HUD for 236 or 235 financing without the involvement of a local housing authority and indeed whether or not such authority is even present in the jurisdiction where the project is proposed.

HUD seeks to minimize the significance of these programs by stressing housing development under the authority of a local housing agency. Pet's Br., pp. 29-34. While conceding that it may contract directly with a private developer under the new Section 8 program, HUD chooses to emphasize the effective control that local jurisdictions can exercise over developers through zoning regulations and other local approvals. (Pet's Br., p. 34). This, of course, is a far different proposition from the assertion that federal housing programs operate only through local government instrumentalities. Rather, it is an attempt by HUD to raise the specter of a developer running the gauntlet established by a variety of local agencies with powers to effectively block low-cost housing developments. Local governments of course do have authority over the use of land, but such authority must be exercised within appropriate limits and for non-invidious reasons. In recent years lower federal courts on numerous occasions have been called upon to assist developers of federally subsidized housing projects who have been confronted with local

interference. These courts have fashioned a strict standard of review and have imposed upon local governmental agencies a substantial burden to justify interference with these housing efforts. See, e.g., *United States* v. *City of Black Jack,* 508 F.2d 1179 (C.A. 8, 1974), *cert. denied,* —— U.S. ——, 95 S.Ct. 2656 (1975); *United Farmworkers of Fla. Housing Project, Inc.* v. *City of Delray Beach, Fla.,* 493 F.2d 799 (C.A. 5, 1974); *Dailey* v. *City of Lawton, Okla.,* 425 F.2d 1037 (C.A. 10, 1970); *Kennedy Park Homes Ass'n.* v. *City of Lackawanna, N.Y.,* 436 F.2d 108 (C.A. 2, 1970), *cert. denied,* 401 U.S. 1010 (1971); *Crow* v. *Brown,* 457 F.2d 788 (C.A. 5, 1972), *aff'g,* 332 F. Supp. 382 (N.D. Ga. 1971).

In short, contrary to petitioner's assertions, a remedy directed to HUD does not necessarily involve local housing authorities. If and when local jurisdictions seek to interpose their authority to interfere with the implementation of the remedy, their actions are subject to careful judicial review.

The petitioner further attempts to undermine the significance of the recent housing assistance program by pointing out that the Secretary of HUD must submit applications by private developers for funding under Section 8, as well as under 236 and 235, to a local governmental unit for review where that unit has filed a housing assistance plan pursuant to section 104(a)(4) of the 1974 Act. See, Pet's Br., p. 34, n.28. The local governmental entity is given the opportunity to determine whether the request for housing assistance by a private developer is consistent with that plan. 42 U.S.C. § 1439(a). Petitioner contends that this is further indication of a congressional policy to defer to local governmental entities. To the contrary, housing assistance

plans are not, as HUD implies, devices for allowing the exercise of local veto power, but rather a method for assuring that the housing needs for lower income people are met.[2]

The filing of housing assistance plans by local governments is required in connection with applications for block grants for community development purposes. The plans must include a survey of the condition of the community's housing stock, establish the number of needed units for persons expected to reside in the community, and indicate the general locations of housing units for lower income persons. With respect to housing lower income persons, the plan must be drawn with the objective of "promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons. . . ." 42 U.S.C. § 5304(a)(4)(C). Thus, the granting of community development funds is tied to the submission of an acceptable plan which takes into consideration the housing needs of lower income people throughout a metropolitan area. The housing assistance plan requirement is clearly designed to insure metropolitan-wide planning and equitable housing development on a regional basis. See, e.g., H. Rep. No. 93-1114 (93rd Cong., 2d Sess. 1974) at pp. 7-8; 24 C.F.R. § 570.303(c).

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[2] Furthermore, some communities may not be entitled to community development funds or may choose not to apply for funds. In fact, numerous communities around the country have opted to forego receiving Federal community development funds under the 1974 Act, notwithstanding entitlement to a grant allocation pursuant to the formula contained in the Act. These decisions to turn away federal monies undoubtedly are intended to avoid committing the local jurisdiction, through the filing of a housing assistance plan, to provide housing for low income people.

The *amici* do not take issue with the fact that local housing authorities have played a major role in providing lower cost housing opportunities through federal supplements. Contrary to the petitioner's view, however, it is evident that the response to national housing needs is not exclusively through these local authorities and that HUD has substantial authority to operate directly with local developers. Indeed, as evidenced by the 1974 revisions to the Housing Act, the legislative trend is towards more direct involvement by HUD with the private market and less dependence on traditional public housing carried forward by local housing authorities.

B. In Accordance with a Congressional Policy to Deconcentrate Low-Cost Housing Throughout Metropolitan Areas, HUD's Primary Focus for the Administration of Its Housing Programs Is the Overall Housing Market Area, Rather Than Limited Geographical Political Entities.

The planning and execution of HUD housing programs are not cabined by the arbitrary boundaries of particular political jurisdictions. HUD operates its programs throughout "housing market" areas, generally on a metropolitan-wide basis. This is in furtherance of a strong congressional policy of deconcentrating housing opportunities for low income and minority persons. This Congressional policy would be frustrated should HUD be limited to planning and executing its low-cost housing programs within the narrow confines of discrete political entities. With respect to HUD housing program activities, therefore, the appropriate district for purposes of viewing and considering meaningful relief to correct the effect of past discriminatory actions is the metropolitan area or the overall Chicago housing market area.

1. The Housing and Community Development Act of 1974 Seeks to Deconcentrate Low-Cost Housing Programs Throughout Metropolitan Areas.

The Congressional goal of deconcentrating low-cost housing programs throughout metropolitan regions was most recently and forcefully set forth in the Housing and Community Development Act of 1974. Congress, in restructuring federal housing and community development assistance programs, did so with a view toward resolving the problems attending racial and economic isolation of lower income citizens in deteriorated inner-city housing. Congress declared that "the Nation's cities, towns, and smaller urban communities face critical social, economic and environmental problems arising in significant measure from . . . the growth of population in metropolitan and other urban areas, and the *concentration of persons of lower income in central cities. . . .*" (emphasis added). 42 U.S.C. §5301(a). Congress went on to indicate that its primary objective in enacting the 1974 law was "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. § 5301(c).

To accomplish these purposes, Congress placed special emphasis on metropolitan-wide planning and equitable housing development on a regional basis. Congress provided that applications for community development funds under the 1974 Act may not be approved unless the applicant submits an application setting forth "a three-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting

those needs, and specifies both short- and long-term community development objectives which have been developed in accordance with *areawide development planning and national urban growth policies*" (emphasis added). 42 U.S.C. § 5304(a)(1). Also, as noted above, the local housing plan must survey the housing stock of the community and assess, among other things, the number of housing units necessary to meet the needs of persons "expected to reside in the community." The housing plan, in addition, must indicate general locations of proposed units for lower income persons with a major objective being the promotion of "greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons . . . ." 42 U.S.C. § 5304(a)(4)(C). The significance Congress attached to the filing of an acceptable housing assistance plan is attested to by the fact that it is the only substantive portion of the community development grant application that may not be waived by HUD. 42 U.S.C. § 5304(b)(3).

The legislative history of the 1974 law reveals that Congress intended HUD to proceed on a metropolitan-wide basis in responding to the nation's housing problems. The House Committee on Banking and Currency, in its report on this legislation, stated that it regarded "as most important the provisions of the bill requiring the submission by all applicants of a housing assistance plan." H. Rep., No. 93-1114 (93rd Cong. 2d. Sess. 1974) at p. 7.[3] The House Committee

[3] The House report is the significant legislative history on this matter as the requirement that applicants file a housing assistance plan with HUD is derived from the House of Representatives version of the 1974 Act. H.R. 15361. The Senate version, S. 3066,

pointed out that a metropolitan-wide scope was essential in shaping local housing assistance plans and that dispersal of housing throughout a metropolitan region was a primary goal. The Committee stated: "The committee wishes to emphasize that the bill requires communities, in assessing their housing needs, to look beyond the needs of their residents to those who can be expected to reside in the community as well." *Id.* at 7-8.

HUD regulations implementing the 1974 Act are responsive to the Congressional mandate that HUD use the review process to encourage dispersal of lower cost housing throughout metropolitan areas. 24 C.F.R. § 570.303(c). The regulations emphasize that in evaluating the housing assistance needs of lower income persons, an applicant community must take into consideration not only the needs of existing residents but the needs of persons expected to reside in the community as a result of planned or existing employment facilities. 24 C.F.R. § 570.303(c)(2). Furthermore, in selecting locations for the construction of new housing for lower income persons, the applicant community is to proceed with the objective of "[p]romoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons." 24 C.F.R. § 570.303(c)(4)(ii).

had instructed HUD to make housing subsidies available and to achieve general conformity with the housing plans of the state and general unit of government. The Senate did not, however, define the contents of such housing plans. The Act, as adopted by Congress, followed the House approach with the final bill focusing on the housing assistance plans as a condition of eligibility for community development funds, rather than for housing subsidies.

Recently HUD circulated a memorandum to all regional administrators and all area office directors emphasizing the importance of the estimate of housing needs as set out by applicant communities in community development fund applications. (HUD Memorandum, from David O. Meeker, Jr., Community Planning Development, May 21, 1975.) The memorandum urged local HUD representatives to consider journey-to-work tables of the U.S. Bureau of Census in evaluating housing assistance plans and stated that where an applicant has failed to estimate the housing needs of persons employed in the community but unable to live there, HUD must take steps to strengthen the applicant's "needs assessment."

2. Other Laws and Regulations Further the Policy of Metropolitan Residential Desegregation.

The filing of housing assistance plans by local communities conforms with and implements the goals and purposes that Congress set forth in the Federal Fair Housing Law of 1968. 42 U.S.C. §§ 3601, *et seq.* In that law, Congress provided that it was the policy of the United States to insure fair housing throughout the United States (42 U.S.C. § 3601), and directed all federal executive departments and agencies, and specifically HUD, to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter." 42 U.S.C. § 3608(d)(5).[4] Title VI

[4] HUD regulations implementing the 1974 Act with respect to community development funds call for "affirmative action" on the part of recipients "to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin or sex." 24 C.F.R. § 570.601 (4)(ii).

of the Civil Rights Act of 1964 barring "discrimination under any program or activity receiving Federal financial assistance" (42 U.S.C. § 2000d) also imposes a higher affirmative duty on HUD to halt patterns of discrimination in federally subsidized housing programs, and Title VI nondiscrimination provisions are specifically included in the 1974 Act. 42 U.S.C. § 5309.

In furtherance of its responsibility to act affirmatively to promote equal housing opportunities, in 1972 HUD adopted regulations establishing project selection criteria for lower income housing developments and setting out affirmative marketing standards for FHA financed housing. With respect to both sets of regulations, HUD proceeded with a view toward promoting metropolitan residential desegregation and incorporated the housing market area as a relevant geographic district for purposes of implementation of the new standards.

The project selection criteria were designed to assist in evaluating requests for priority registration and reservation of contract authority for low-cost housing project subsidies. 24 C.F.R. § 200.700. Among the criteria included for evaluating development proposals is the sponsor's ability to achieve the objective of providing "minority families with opportunities for housing in a wide range of locations" and to "open up nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination." Superior ratings are to be afforded those projects which *"within the housing market area, . . .* will provide opportunities for minorities for housing outside existing areas of minority concentration and outside areas which are already substantially racial-

ly mixed. . . ." (emphasis added). *Id.* Significantly, HUD in its introductory statements to the promulgation of the project site election criteria noted that it had specifically rejected a request that it limit the term "housing market area" as used within the regulations to the boundaries of local political jurisdictions. HUD stated: "the Department has declined to adopt the suggestions because housing market areas often are independent of arbitrary political boundaries and allotments to certain parts of those areas could result in the Department's approving projects which would be less than the best that could be created for the people of each housing market area." 37 Fed. Reg. 203 (1972).

To assure equal access to lower cost housing, HUD's regulations require that an affirmative marketing program be in effect for all multi-family projects to be undertaken with FHA subsidy. The program must include means for publicizing to minority persons the availability of housing opportunities, with publication to take place through "the type of media customarily utilized by the applicant, including minority publications or other minority outlets which are available in the housing market area." 24 C.F.R. § 200.620(a). The HUD circular providing detailed instructions for filing an affirmative marketing plan makes clear that a metropolitan region is to be considered in devising a proper plan. The circular states:

> The affirmative fair housing plan . . . shall be designed to attract applications for the housing from all in the SMSA [standard metropolitan statistical area], or if there is no SMSA, the housing market area, including whites, Blacks, Spanish-Americans, Orientals, American Indians, and other groups which are subjected to housing discrimination on the basis of race, color, religion or national origin. HUD Circular 8030.2 Rev., App. 2, p. 3, June, 1973.

The Federal government also has emphasized regionalism in land use and housing planning. This focus grows out a long standing recognition that a national housing policy can be implemented only on a regional basis.

Congressional commitment to regional planning emerges clearly in the Housing Act of 1954. That law established a comprehensive Planning Assistance Program, known as the "701" program, with a goal toward stimulating the state to create regional planning bodies. 40 U.S.C. § 461(a). The law provided for federal grants for the undertaking of comprehensive planning by state, metropolitan and regional planning agencies. In 1959, Congress amended the 701 program to require that, "[p]lanning assistance under this section shall, to the maximum extent feasible, cover *entire urban areas* having common or related urban development problems" (emphasis added). Housing Act of 1959, Pub. L. No. 80-372, § 701(a), 73 Stat. 678. In addition, "[t]he Administrator is authorized, in areas embracing several municipalities or other political subdivisions, to encourage planning on a unified metropolitan basis and to provide technical assistance for such planning and the solution of problems relating thereto." *Id.* § 701(c), 73 Stat. 679.[5]

[5] In 1965 Congress again amended the 701 program to reemphasize the need for metropolitan planning. "To the maximum extent feasible, all grants under this subsection shall be for activities relating to all the developmental aspects of the total metropolitan area or urban region, including, but not limited to, land use, transportation, housing, economic development, natural resources development, community facilities, and the general improvement of

HUD characterizes the goals of the 701 program with respect to housing, as including the elimination of past racial discrimination, developing growth policies which will insure provision of an adequate supply of housing with a variety of housing types and a proximity of housing to jobs, and the provision of a decent residential environment throughout regional planning areas.[6]

In 1968 Congress required that a "housing element" be included as part of the comprehensive planning activity of any agency receiving federal urban planning assistance funds. Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 528, amending 40 U.S.C. § 461(a). The purpose of the housing element is to insure that housing needs of the region and local communities will be included in planning efforts undertaken with federal dollars. Its inclusion in the federal planning statutes reemphasizes the congressional recognition that lower cost housing must be approached on an area wide basis. HUD itself has stated that a planning agency's housing element must specifically consider "the needs and desires of low-income and minority groups."[7]

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living environments." Housing and Urban Development Act of 1965, Act of Aug. 10, 1965, Pub. L. No. 89-117 § 701(g), 79 Stat. 502-503. And, as we develop further, *infra*, Congress in the Housing and Urban Development Act of 1968 again amended the 701 provisions, this time to insure that comprehensive planning take into account housing needs. Pub. L. No. 90-448, 82 Stat. 528.

[6] HUD Handbook 1, Comprehensive Planning Assistance Requirements and Guidelines for a Grant 4-8 (Mar. 1972).

[7] HUD Circular, Areawide Planning Requirements (MPD 6415.1A, 7-31-70), Section III, Comprehensive Planning Certification. Regional planning received further federal support through the Federal Office of Management and Budget's Circular A-95.

It is evident, therefore, that with respect to planning for, promoting and carrying forward our nation's lower cost housing programs, HUD's operations are not confined by political boundaries, but encompass entire housing market areas. Since the entire housing market area is the focus of HUD's activities, discrimination in which the agency is involved in any part of a particular area requires remedial relief throughout the area. This view is supported by this Court's ruling in *Keyes* v. *School District No. 1, Denver, Colo., supra.* In *Keyes,* this Court held that a finding of discrimination in a major portion of the Denver school district provided the basis for fashioning a district-wide remedy. This Court's ruling in *Keyes* was predicated on the common sense view that, lacking evidence to the contrary, racial segregation in other portions of this district must be presumed to be a reciprocal effect of the *de jure* practices demonstrated and reflective of the same discriminatory intent. Similarly, the finding of discrimination within

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This Circular creates a Project Notification and Review System and sets procedures whereby regional planning agencies serve as metropolitan clearinghouses to review and comment on local applications for various federal grants-in-aid, including community development grants. United States Office of Management and Budget, Circular A-95 (Rev. Feb. 9, 1971). The A-95 Circular was promulgated by OMB pursuant to Title IV of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. §§ 4231 *et seq.,* and the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §§ 3301 *et seq.* The Clearinghouse comments are to be based on planning, environmental or civil rights criteria. The agency may consider whether the application is consistent with the comprehensive planning goal for the area and whether the project contributes to a more balanced pattern of residential settlement. See, Testimony of Arnold Weber, Associate Director, Office of Management and Budget, *Hearing Before the United States Commission on Civil Rights,* 350-63, 449-83 (Washington, D.C. 1971).

the inner-city portion of the Chicago market area along with evidence of racial segregation throughout the area justifies relief involving the entire market area.

3. Current Congressional Policies of Deconcentrating Low-Cost Housing Are Responsive to Past Racial Discrimination and Its Damaging Consequences.

Congress in shaping these civil rights laws and, in particular, when fashioning the structure of the 1974 Act with respect to deconcentration of lower cost housing opportunities, was responding affirmatively to the need to undo patterns of racial segregation in housing that the federal government had helped to establish in the first place. The existence of these patterns and the federal role in their creation has been documented in numerous reports and recommendations of government agencies and commissions.

The findings of the National Advisory Commission on Civil Rights Disorders (Kerner Commission) have been particularly significant. For example, the Commission noted:

> Federal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation. If this is not done, those programs will continue to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them. Report of *The National Advisory Commission on Civil Disorders,* 13 (1968).

The Commission called for the reorientation of "[f]ederal housing programs to place more low—and moderate—income housing outside of ghetto areas." *Id.*

Similarly, the President's Committee on Urban Housing (Kaiser Commission) in 1968 stated:

> Past housing programs have allowed very little choice on the part of recipients, except the choice of continuing to live in deteriorating slum housing. Public housing, for example, has offered only rental units, usually located within or on the fringes of city slums. Artificial restrictions which restrict the location of subsidized housing should be eliminated so that recipients of assistance would have the widest possible choice of where to live. Removal of restrictions will allow people to locate near places of employment. President's Committee on Urban Housing, *A Decent Home,* 47-48 (1968).

In 1974 the United States Commission on Civil Rights in evaluating equal opportunities in our nation's suburbs found that, "the exclusion of minorities from suburbs diminishes their housing alternatives and often forces minorities to live in substandard inner city housing." U.S. Commission on Civil Rights, *Equal Opportunity in Suburbia,* 67 (1974). The Commission then went on to recommend that "[c]ongress should enact legislation aimed at facilitating free housing choice throughout metropolitan areas for people of all income levels on a nondiscriminatory basis. . . ." and called for "the adoption of a national public policy designed to promote racial integration of neighborhoods throughout the United States." *Id.* at 69-70.

With respect to past Federal support of discriminatory housing practices, the Commission on Civil Rights also stated, "[s]ince the 1930's the Federal Government has supported a variety of programs to increase the supply of housing and to facilitate urban

development or redevelopment. Through these activities, the Federal Government has played a primary role in contributing to our segregated housing patterns." *Id.* at 36.

Former President Nixon in a major statement in 1971 on equal housing opportunity also confirmed the Government's responsibility for past support of racial segregation.

> Federal policy itself, quite unsurprisingly, in past eras reflected what then were widespread public attitudes. Policies which governed FHA mortgage insurance activities for more than a decade between the middle thirties and the late forties recognized and accepted restrictive covenants designed to maintain the racial homogeneity of neighborhoods.
>
> Compounding the plight of minority Americans, locked as many of them were in deteriorating central cities, was the Federal urban renewal program. It was designed to help clear out blighted areas and rejuvenate urban neighborhoods. All too often, it cleared out but did not replace housing which, although substandard, was the only housing available to minorities. Thus it typically left minorities even more ill-housed and crowded than before.
>
> Historically, then the Federal Government was not blameless in contributing to housing shortages and to the impairment of equal housing opportunity for minority Americans. Much has been done to remedy past shortcomings of Federal policy, and active opposition to discrimination is now solidly established in Federal law. But despite the efforts and emphasis on recent years, widespread patterns of residential separation by race and of unequal housing opportunity persist. Statement of Richard M. Nixon, June 11, 1971. Quoted in *Hearing Before the United States Commission on Civil Rights* (Washington, D.C. 574-75 1971).

The indifference to racial discrimination shown by HUD in the instant case led the lower court to state, "[i]ndeed, anyone reading the various opinions of the District Court and of this Court quickly discovers a callousness on the part of the appellees towards the rights of the black, underprivileged citizens of Chicago that is beyond comprehension." *Gautreaux* v. *Chicago Housing Authority,* 503 F.2d 930, 932 (C.A. 7, 1974).

The numerous reports, findings and calls for action certainly charted the course Congress has followed in recent years in establishing federal equal housing laws.

C. The Lower Court Was Obligated to Fashion a Remedy Which Would Effectuate Underlying Congressional Policies and Goals to the Fullest Possible Extent.

The burden of the foregoing arguments is that the decision of the Court of Appeals does not entail interdistrict remedies within the scope of the *Milliken* ruling, since relief here is directed to HUD and requires it to act only within its normal sphere of operation (in this case the Chicago housing market area), and conforms with the Congressional policy of deconcentrating lower cost housing opportunities outside the inner-city. In addition, *amici* contend that the very existence of this underlying Congressional policy provided an independent basis of support for the lower

court's effort to fashion equitable remedies to accomplish a metropolitan solution to the housing problem.

This Court has long held that a federal court, sitting as a court of equity, has broad powers to fashion to the extent possible remedies necessary to effectuate congressional purposes. See, *Porter* v. *Warner Co.*, 328 U.S. 395 (1946); *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288 (1960); *Edelman* v. *Jordan*, 415 U.S. 651, 672, n.15 (1974); *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210 (1944); *J. I. Case Co.* v. *Borak*, 377 U.S. 426 (1964); *Dietrick* v. *Greaney*, 309 U.S. 190 (1940). In the *Borak* case, for example, this Court, in interpreting the Securities Exchange Act of 1934, stated, "[w]e, therefore, believe that under the circumstances here it is the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose." 377 U.S. at 435. Similarly, in interpreting the scope of the National Bank Act, the Court in *Dietrick* v. *Greaney* stated, "[b]ut it is the federal statute which condemns as unlawful respondent's acts. The extent and nature of the legal consequences of this condemnation, though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted." 309 U.S. at 200-201.

The underlying legislative policies in this case emerge from the metropolitan desegregation goal contained in the Housing and Community Development Act of 1974, the directive that HUD act affirmatively to promote equal housing opportunities set forth in the Federal Fair Housing Act of 1968, and the prohibition of discrimination in federal programs contained in Title VI of the Civil Rights of 1964. In

recent years this Court also has instructed that an expansive reading must be afforded the Civil Rights Laws of 1964 and 1968 in order to assist Congress in fulfilling its goal of eliminating segregation and discrimination. See, *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); *Albemarle Paper Co.* v. *Moody*, —— U.S. ——, 45 L. Ed. 2d 280 (1975); *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972).[8] Thus, we deal here with a factor not present in *Milliken*, i.e., the provision by the lower court of a remedy clearly in accordance with a congressional objective.[9]

The petitioner attempts, however, to combat this significant distinction between the instant case and

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[8] The lower courts have followed this lead, also calling for an expansive interpretation of Title VIII of the Civil Rights Act of 1968, the Federal Fair Housing Law. See *Williams* v. *Matthews Co.*, 499 F.2d 819 (C.A. 8, 1974); *United States* v. *City of Black Jack, Mo., supra; Otero* v. *New York City Housing Authority*, 484 F.2d 1122 (C.A. 2, 1973).

[9] *Milliken* raised no underlying legislative purpose which the court was required to effectuate. If anything, Congress has shown an antipathy to metropolitan approaches to school desegregation.

In the Equal Educational Opportunities Act of 1974, Title II of the Education Amendments of 1974, 20 U.S.C. §§ 1701 *et seq.*, for example, the Congress declared it to be the policy of the United States that "the neighborhood is the appropriate basis for determining public school assignments." 20 U.S.C. § 1701(A)(2). The Act also specifically required that in the formulation of remedies under it school district lines were not to be altered except upon proof that the lines were drawn for the purpose, and had the effect, of segregating children, or upon proof that, as a result of discriminatory practices within the school districts, the lines had the effect of segregating children. 20 U.S.C. §§ 1715 and 1756.

Milliken by itself fashioning a statutory argument in opposition to the Court of Appeals decision. HUD argues that the ruling below contravenes a Congressional policy embodied in Section 602 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1. This section provides that in the event of a violation of any nondiscrimination requirement of Section 601 of the Act, the sanction imposed should be limited to the particular political entity found to have been in violation and to the particular program affected. See Pet's Br. p. 18, n.15. This is the so-called pinpoint provision of Title VI, and is intended to protect against cut-off of federal funds to jurisdictions not found guilty of discrimination. The petitioner maintains that the relief ordered by the Court of Appeals punishes innocent beneficiaries of federal programs in the absence of a finding of discriminatory actions and that the Court of Appeals therefore has violated the Congressional policy incorporated in Section 602.

HUD identifies these innocent beneficiaries as "suburban public housing applicants" who may be displaced by an order requiring that housing be made available to inner-city low-income blacks.

But the "pinpoint provision" of Title VI has absolutely no application to a court order designed not to terminate funds but to confer a benefit on a class which has suffered as a result of governmental discrimination. The Court of Appeals has not sought to deny already allocated funds to suburban housing authorities, nor has it sought to displace suburban residents from access to lower-cost housing opportunities. Rather metropolitan redress simply compels HUD to promote added housing opportunities for the poor in the suburbs; it does not curtail housing for the poor

who currently reside outside the inner-city. Thus, the petitioner's effort to pose the interests of poor suburban whites against the needs and aspirations of poor inner-city blacks is specious and unworthy. This Court should reject it out of hand.

II

THE DECISION BELOW REQUIRING A METROPOLITAN REMEDY TO RESOLVE THE HOUSING PROBLEMS OF LOWER INCOME CITIZENS NEITHER PRESENTS MAJOR PRACTICAL PROBLEMS, NOR CONFLICTS WITH WELL ESTABLISHED TRADITIONS WHICH DICTATE AGAINST SUCH RELIEF.

In *Milliken,* this Court was deeply troubled by the practical problems inherent in implementing an interdistrict remedy. The Court noted that an interdistrict remedy would, in effect, require the consolidation of numerous independent school districts and would create many logistical difficulties of great complexity. The Court especially stressed the tradition of neighborhood schools. 418 U.S. at 741-42. The Court of Appeals in the instant case specifically considered the concerns expressed in *Milliken* and found them inapplicable to the question of metropolitan housing desegregation. Instead, the court concluded that metropolitan relief as to HUD is "necessary and equitable." *Gautreaux* v. *Chicago Housing Authority,* 503 F.2d 930, 936 (C.A. 7, 1974).

A. The Lower Court Correctly Concluded That Metropolitan Housing Desegregation Did Not Pose Practical Problems or Conflict with Tradition As Was the Case in *Milliken.*

The *amici* support the lower court's view that neither tradition nor major practical problems prevent HUD from carrying out a metropolitan remedy. It is

our position that the problems that must be solved to implement metropolitan school segregation simply do not arise in the housing area. Nor is there a strong tradition for dealing with the needs for lower income housing on a local basis. Regional approaches to residential desegregation are practical and essential to meaningful relief.

The lower court plainly was correct in concluding that there is no tradition of local control in matters relating to public housing. As the Court said, "[t]here is no deeply rooted tradition of local control of public housing; rather, public housing is a federally supervised program with early roots in federal statutes . . . There has been a federal statutory commitment to nondiscrimination in housing for more than a century, . . . and the Secretary of HUD is directed to administer housing programs 'in a manner affirmatively to further the policies' of non-discrimination." *Gautreaux* v. *Chicago Housing Authority, supra* at 936.

We already have considered some of the practical aspects of a metropolitan remedy in this case. We have noted that HUD's usual focus for administering subsidized housing programs is the Chicago market area, and that HUD has the authority and the responsibility to deal directly with private housing developers in subsidizing lower cost housing, without the intervention of local housing authorities. Unlike *Milliken,* where it may have been necessary for as many as 54 independent school districts to merge "into a vast new super school district," 418 U.S. at 743, here there is no issue of possible consolidation of independent political entities.

The Court in *Milliken* also noted the need for "large-scale transportation of students" to accomplish interdistrict school desegregation. *Id.* The ultimate construction of low cost housing in the suburbs presents no similar problem of transportation. The remedy here is complete once the necessary housing is built; it is not a continuing, daily remedy as in the case of school transportation. Nor does the lower court's order here pose problems with respect to financing, levying of taxes, and bonding authority, other troubling issues considered in *Milliken.* It is HUD's statutory business to aid construction of lower cost housing; it is only a question of where this housing is to be built. Finally, the practical issues relating to school administration, such as judgments concerning curricula, attendance zones, equipment purchase, involvement of elected school boards, noted in *Milliken,* do not emerge as a result of a metropolitan approach to housing. The statutory scheme already outlined as to federal housing programs eliminates this type of concern. HUD's day to day operations entail the support of lower cost housing and the Court of Appeals' order does not disturb this basic pattern. The lower court's decree simply does not involve the "complete restructuring" of the federal housing laws and programs; rather the order is consistent with HUD's statutory duty to promote the deconcentration of housing opportunities.

B. The Decision Below Is In Accord with the Dictates of Sound Urban Planning.

HUD's statutory duty to promote the deconcentration of housing opportunities and to operate in housing market areas is based on principles of planning

developed to promote the most effective implementation of housing programs. Planners generally recognize that the most practical and effective way to develop housing programs is by focusing on the broader metropolitan region.

Numerous factors account for the metropolitan emphasis in urban planning. The interrelationship between access to jobs and availability of housing is certainly critical. As job opportunities are established in suburban areas, creation of lower cost housing opportunities for workers near to those jobs becomes a major concern for employers as well as employees.[10] Former Assistant Secretary of HUD Samuel J. Simmons has described this problem:

> As whites have left the cities, jobs have left with them. After 1960, three-fifths of all new industrial plants constructed in the country were outside of central cities. In some cases, as much as 85% of all new industrial plants located outside central cities were inaccessible to Blacks and other minorities who swelled ghetto populations.[11]

The court below recognized the critical problems created by separating housing and employment opportunities and warned: "we must not sentence our poor, our underprivileged, our minorities to the jobless slums of the ghettos and thereby forever trap them in the vicious cycle of poverty which can only lead them to lives of crime and violence."[12]

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[10] Davidoff and Davidoff, "Opening the Suburbs: Toward Inclusionary Land Use Controls," 22 *Syracuse L. Rev.* 509 (1971).

[11] Quoted in *Gautreaux* v. *Chicago Housing Authority*, 503 F.2d 930, 938 (C.A. 7, 1974).

[12] *Id.* at 938.

It also is essential to understand that suburban communities do in fact look to the inner-city as the locus of a region's economic, social and political life. Indeed, the inability to achieve social equity within confined political boundaries and the very complexity of our metropolitan communities mandate a more comprehensive approach. According to former Secretary of HUD, George Romney, "[t]he City and the suburbs together make up what I call the 'real city.' To solve problems of the 'real city,' only metropolitan-wide solutions will do."[13]

Unlike the local school district emphasis in education, in the field of urban planning, regional and metropolitan approaches have dominated at least since the 1930's. In 1938, for example, Lewis Mumford, in a study of the problems of our cities saw the need for a regional focus in the planning profession.[14] In 1942, as the nation's economy started to revive from the depression, planner Louis Wirth strongly advocated the metropolitan region as the most appropriate planning unit.[15] Today metropolitan wide planning is basic to the planner's approach to resolution of our urban problems.

Thus, one planner in stressing the need for regional approaches in his discipline has stated:

> If this description of the spatial structure of a developing economy is substantially correct, we

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[13] *Id.* at 937.

[14] Lewis Mumford, *The Culture of Cities* (New York: Harcourt, Brace and Co., 1938).

[15] Louis Wirth, "The Metropolitan Region as a Planning Unit," *National Conference on Planning*, Proceedings of the Conference held at Indianapolis, Indiana, May 25-27, 1942 (Chicago, American Society of Planning Officials, 1942), pp. 141-151.

> conclude that the city region has, in fact, become the basic areal unit for carrying out comprehensive developmental planning below the national level. It is a region defined by an intricate pattern of economic and social interdependencies; it is, therefore, a "community" informed of certain common interests; and above all, the locus of socio-economic power for a broader geographic area. Friedman, "The Concept of a Planning Region—The Evolution of an Idea in the United States," reprinted in Friedman and Alonso, *Regional Development and Planning* 511-12 (M.I.T. Press 1964).

Another commentator, in noting the need for managed growth policies, echoed this view:

> Individual communities must consider the regional impacts of their decisions. Regional planning and management is moving from the status of an advisory exercise in wishful thinking to a mandated requirement of many governmental activities. The local community must respond to a growing and sometimes bewildering variety of regional criteria dealing with economics, with social equity, and with environmental quality. The mechanisms for expressing this regional interest are as yet very imperfect, but the mandate is clear. The regional interest is to be part and parcel of any approach to managed growth. Parker, Francis H. "Regional Imperatives and Managed Growth," III *Management and Control of Growth* 284 (Urban Land Inst. 1975).

This emphasis on regionalism is rooted in the recognition that fundamental urban developmental decisions cannot be left to the unfettered discretion of a multitude of individual political jurisdictions operating independently of each other. This basic understanding repeatedly is stressed in the planning literature and receives special emphasis when issues of equal housing opportunities are raised.[16] Left to their own devices, each political entity will close out lower cost housing for a variety of reasons, including possible adverse property tax consequences, the need for additional public services or the possible alteration of the nature and character of the community. It is now widely recognized that matters such as creation of an adequate water supply provision, mass transportation, the building of highways, the disposal of solid wastes, and the insuring of environmental controls require regional solutions. Similarly, considerations of practicality as well as fairness have led planners to conclude that the provision of housing opportunities for all citizens entails a regional solution and an equitable allocation system.[17]

C. Metropolitan Approaches Are Essential to This Country's Welfare

Practical considerations do not militate against metropolitan housing remedies. In fact, practical considerations are compelling as the survival of our society *requires* such remedies. Our society increasingly is being divided between black and poor inner cities and

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[16] See, e.g., Report of The National Commission on Urban Problems to the Congress of the United States (Douglas Commission), *Building The American City*, House Doc. No. 91-34 (91st Cong. 1st Sess. 1968), p. 7; Brooks, *Lower Income Housing: The Planners' Response*, 18-19 (American Society of Planning Officials, 1972).

[17] See, Franklin, Falk, Levin, *In-Zoning, A Guide for Policy-Makers on Inclusionary Land Use Programs* (Potomac Institute, 1975); *Southern Burlington County NAACP* v. *Mt. Laurel, N.J.*, 67 N.J. 151 (1975).

white and well-to-do suburbs. The Kerner Commission has most dramatically stated the problem:

> The nation is rapidly moving toward too increasingly separate Americas. Within two decades, this division could be so deep that it would be almost impossible to unite: a white society principally located in suburbs, in smaller central cities, and in the peripheral parts of large central cities; and a Negro society largely concentrated within large central cities. The Negro society will be permanently relegated to its current status, possibly even if we expend great amounts of money and effort in trying to "gild" the ghetto. . . . In the long run, continuation and expansion of such a permanent division threatens us with two perils. The first is the danger of sustained violence in our cities. The timing, scale, nature, and repercussions of such violence cannot be foreseen. But if it occurred, it would further destroy our ability to achieve the basic American promises of liberty, justice and equality. The second is the danger of a conclusive repudiation of the traditional American ideals of individual dignity, freedom, and equality of opportunity. *Report of the National Advisory Commission on Civil Disorders* 225-26 (1968).

The Commission's warning remains as timely today as when it was issued. It may be avoided if we pursue area wide solutions to our urban problems.

The decision below recognized the importance of a metropolitan approach to the effectiveness of any remedy designed to deal with housing segregation. *Gautreaux* v. *Chicago Housing Authority, supra* at 936. Affirmance of the decision of the Court of Appeals will help to insure that the divisions in our society described by the Kerner Commission will not become permanent.

CONCLUSION

Fore the foregoing reasons *amici* respectfully request that the decision of the Court of Appealst be affirmed.

Respectfully,

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